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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**

8 Roy and Josie Fisher, et al.,

9 Plaintiffs,

10 v.

11 United States of America,

12 Plaintiff-Intervenor,

13 v.

14 Anita Lohr, et al.,

15 Defendants,

16 and

17 Sidney L. Sutton, et al.,

18 Defendants-Intervenors,

CV 74-90 TUC DCB  
(Lead Case)

20 Maria Mendoza, et al.,

21 Plaintiffs,

22 United States of America,

23 Plaintiff-Intervenor,

24 v.

25 Tucson Unified School District No. One, et al.,

26 Defendants.

CV 74-204 TUC DCB  
(Consolidated Case)

1                   **REPORT ON MENDOZA PLAINTIFFS' REQUEST FOR FINDING OF**  
2                   **NONCOMPLIANCE BY TUSD REGARDING THE**  
3                   **IMPLEMENTATION OF CULTURALLY RESPONSIVE COURSES**

4                   **Background**

5                   Section V.E.6.a.ii of the USP requires the District by the beginning of the 2013-2014  
6                   school year, to "develop and implement culturally relevant courses of instruction designed to  
7                   reflect the history, experiences, and ~~culture~~ of African American and Mexican American  
8                   communities... At all feasible grade levels in all high schools across the District...." This section  
9                   of the USP further requires the District to "pilot the expansion of [CRCs] to sixth through eighth  
10                  graders in the 2014-2015 school year, and [to]explore similar expansions throughout the K-12  
11                  curriculum in the 2015-2016 school year."

12                  Following a request by the Mendoza plaintiffs that the Special Master file a report to the  
13                  Court finding the District in noncompliance with these requirements of the USP, the Special  
14                  Master filed such a notice with the Court on October 14, 2014. Prior to Court action, the  
15                  Mendoza plaintiffs entered into a stipulated agreement with respect to an "Intervention Plan" for  
16                  the spring term 2015 and an "Implementation Plan" for the 2015-16 school year (ECF 1761).  
17                  This agreement was approved by the Court on February 12, 2015 (ECF 1768).

18                  **The Intervention Plan**

19                  The District acknowledges that it did not fully implement the intervention plan for the  
20                  spring term 2015. The reasons they provide include problems recruiting teachers, personnel  
21                  issues in the central administration, and the limited time they had to carry out the commitments  
22                  made. The Mendoza plaintiffs agreed to a discussion of these issues and presentation of relevant  
23                  information to be included in the Special Master's annual report rather than a report to the court.  
24                  Therefore, this Report is a response to the Mendoza's request for a report by the Special Master  
25                  that the District has failed to implement the Implementation Plan (IP) for the 2015-16 school year  
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1 and therefore has not complied with the requirements of the USP.

2 The Implementation Plan (IP)

3 Summary of Finding

4 On July 20, 2015, the Mendoza plaintiffs submitted a request to the Special Master to find  
5 the District in noncompliance with its agreements embodied in the IP. The District responded to  
6 these concerns on August 19, 2015. The Mendoza plaintiffs refined their concerns related to the  
7 District's compliance with the IP on August 29, 2015. The Special Master collected data and  
8 other information related to the District's efforts. Based on this data and information, the Special  
9 Master concludes that while the District might have been more effective in ways suggested  
10 below, the efforts to put in place the provisions of the IP are reasonable and a finding of  
11 noncompliance is therefore not warranted.

12 What Has Been Accomplished

13 As of September 4, 2015, 1365 students had been enrolled in 55 CRC in nine of the 10  
14 high schools. The availability of these courses varies considerably with Catalina, Rincon, Sabino,  
15 Sahauro, and Santa Rita offering one to three sections of the CR courses. While there is much  
16 work to be done in the schools with limited offerings, the District has met the letter of its  
17 commitment to offer courses in each of the high schools except that there is no CR course at  
18 University High School. UHS students can take CR courses at Rincon.

19 The District also committed to offer CR courses in each of the traditional middle schools.  
20 There are 17 CR courses available in the middle schools with at least one course available in each  
21 of the schools. 481 students were enrolled in these courses as of September 4. The number of  
22 courses at this level was sustained during the spring term.

23 In the spring term, the number of students dropped to 1195 for two reasons: the CR  
24 government courses are one-term courses, and (2) some students dropped the CR courses in the  
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1 spring. The total number of classes in the spring was 53 as compared to 55 in the fall.

2 District staff believes that these enrollment numbers at both high school and middle  
3 school level will increase markedly in the 2016-17 school year. In addition, the CR curriculum  
4 will be adapted to related curriculum in some elementary schools

5 Concerns of the Mendoza Plaintiffs

6 The concerns of the Mendoza plaintiffs may be grouped into four categories: adequate  
7 funding, teacher recruitment, professional development and support for teachers, and student  
8 recruitment.

9 *Funding*

10 Funding to which the District committed appears to be reflected in the 2015-16 budget  
11 with one important exception. The agreement in the IP provided for 12 itinerant teachers, but the  
12 budget provides for the appointment of only six. These itinerant teachers play important roles  
13 both to teach some courses but, more significantly, to be mentors and coaches for teachers of the  
14 CR courses. The District has found it difficult to recruit teachers to this role and at this point has  
15 not filled one of the six positions and has appointed two half-time people to fill another of the  
16 other five positions. Given that enrollment of students is what it is, it appears that a cadre of six  
17 itinerant teachers is adequate. However, this will not be the case in the future when the District  
18 staff estimates that the number of students enrolled in these courses could double.

19 *Teacher Recruitment*

20 The basic problem in scaling up the CR courses has been the difficulty of recruiting  
21 enough teachers. In most core courses, principals can assign qualified teachers to particular  
22 courses. That option is not desirable with respect to the CR courses. The positive effects of these  
23 courses on students have a lot to do with the commitment of teachers to the content and to a  
24 particular approach to teaching that is student-centered and culturally responsive. Requiring a  
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1 teacher to teach a CR course that he or she doesn't want to teach would likely have negative  
2 consequences. It appears that the reticence of teachers – which has been fueled by the opposition  
3 by the State to the courses, and, to some extent, by community controversy – is dissipating. As  
4 the District leadership makes its support for the courses clearer and as other teachers sign on,  
5 teachers who were interested but reluctant have been expressing interest. The extra pay for  
6 participation in professional development experiences connected to the CR courses is both  
7 symbolically and practically important.

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9 The fact that more than 70 percent of the sections are offered in three of the 10 high  
10 schools suggests that principals in the other high schools need to make a greater effort in  
11 recruiting teachers. The absence of courses means that there are limited opportunities for students  
12 to learn from other students and teachers about the CR courses. In some cases, when submitting  
13 job descriptions for teachers of courses that could be taught as CR courses, principals noted that  
14 they were looking for teachers with an interest in CR courses. In other cases, principals may have  
15 been reluctant to imply that the candidate would necessarily be teaching CR course or perhaps  
16 they had felt existing staff could take advantage of this opportunity. In two high schools and one  
17 middle school CRPI staff participated in the interviews with positive results.

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19 *Professional Development and Support for Teachers*

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21 Almost all of the teachers teaching CR courses are doing so for the first time. Six of the  
22 23 CR teachers at the high school level are new to TUSD this year. CR teachers at the middle  
23 school level have even less formal professional development with several teachers having none at  
24 the beginning of the school year. This does not mean that the teachers do not know their subject  
25 matter or that their approaches to teaching are not culturally responsive. But, the Mendoza  
26 plaintiffs are appropriately concerned about whether teachers are adequately prepared to offer  
27 these unique courses.

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1       Only 11 of the 23 teachers had experienced a substantial amount of the available  
2 professional development at the beginning of the school year. In addition to new appointees to  
3 the District, several teachers signed on to teach after the formal professional development  
4 activities began. The District made a decision to have these teachers offer courses so as to  
5 increase student access. All teachers are paid extra for a half day weekend training activity each  
6 month and CRPI staff, including itinerant teachers, act as coaches and mentors on an ongoing  
7 basis. This level of support is unusual in other districts implementing a difficult to teach  
8 curriculum.

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10      In summary, the District offered the professional development it committed to, but  
11 because many teachers signed up to offer courses after formal professional development had  
12 begun or were beginning teachers, many teachers did not have the training planned for. The  
13 District made a sensible choice to offer the courses and to provide ongoing support where needed.

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15      *Student Recruitment*

16      The District developed brochures for high school students and shared these with each  
17 school to be distributed as they saw fit. All courses were listed in school catalogs. In some  
18 schools, the history courses were listed as US History – Mexican American or African American  
19 Viewpoints; in other catalogs the same course was listed as American History – Mexican or  
20 African American Viewpoints thereby affecting the place in the catalog where the course was  
21 listed. Henceforth, the CR history courses will be listed as American History, which presumably  
22 will increase the course enrollments. High school students enroll in classes but not for specific  
23 hours when the courses are taught. When there are a limited number of CR courses available,  
24 students must sometimes make a choice between a requirement for an elective they need to have  
25 and the CR course, credit for which can also be obtained from the conventional history,  
26 government, or English classes. The net result of this process is that some students who would  
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1 prefer CR course are unable to take one. The number of such students is unknown.

2 The IP approved by the court provided that courses would be offered with as few as 15  
3 students. The District subsequently changed that number to 10 (the only CR course offered at  
4 Sabino has nine students). The average class size is 25.

5 At middle schools, two types of courses are offered -- English/Language Arts and Social  
6 Studies. Students were placed in these courses and course descriptions were sent home and  
7 students and parents were given the choice to opt out. Very few did.

8 The IP provided that when courses have low enrollment, efforts would be made to  
9 increase student enrollment before courses were closed and not offered. This apparently proved  
10 difficult to do because students would have signed up for other courses from which they would  
11 have to be recruited. In one case, the District combined junior and senior sections for total of 15  
12 students allowing the juniors to make up the second part of the class in the coming year. In its  
13 response to the first request by the Mendoza plaintiffs for a noncompliance finding, the District  
14 indicated that there were structural problems and coding issues (which turned out to be the same  
15 problem) that it had to confront. But these issues had nothing to do with student experience in  
16 enrolling and involved the District's ability to identify efficiently its course enrollments. This  
17 problem was solved.

18 The Mendoza plaintiffs expressed concern that only two of the three promised social  
19 studies pilot courses at the middle school level were being offered. But now there are four such  
20 courses.

21 Recommendation

22 While the District did not effectively implement the provisions of the stipulation  
23 agreement regarding CR courses in the spring of 2015, it took positive actions to implement the  
24 provisions of the agreement for the 2015-16 school year. Nowhere in the USP, any action plan  
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1 for CRC, or the stipulated agreement between the District and the Mendoza plaintiffs are there  
2 specific goals for student enrollment in CR courses. As noted above, I believe that the District is  
3 in reasonable compliance with the provisions of USP.

4 To ensure continued progress in implementing the provisions of the USP and the intent of  
5 the stipulation agreement, adequate funding for the addition of courses and curriculum content at  
6 all levels should be assured.

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9 Respectfully submitted,

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11 \_\_\_\_\_/s/  
12 Willis D. Hawley  
Special Master

13 Dated: April 20, 2016  
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**CERTIFICATE OF SERVICE**

I hereby certify that on, April 20, 2016, I electronically submitted the foregoing **REPORT ON MENDOZA PLAINTIFFS' REQUEST FOR FINDING OF NONCOMPLIANCE BY TUSD REGARDING THE IMPLEMENTATION OF CULTURALLY RESPONSIVE COURSES** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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